



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ( “ the regulations “) and Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the rules”)**

**Chamber Ref: FTS/HPC/PR/24/3448**

**Re: Property at 18 Hazeldean Terrace, Edinburgh, EH16 5RU (“the Property”)**

**Parties:**

**Mr Haoyuan Zhang, 18 Hazeldean Terrace, Edinburgh, EH16 5RU (“the Applicant”)**

**Mr Kun Li, 6 Redgauntlet Terrace, Edinburgh, EH16 5SE (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has not complied with Regulation 3 of the Regulations and granted an order in favour of the Applicant and against the Respondent in sum of Two Thousand Five Hundred Pounds( £2500.00)**

**Background**

1.This application for an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 was first received by the tribunal on 27 July 2024 and accepted by the tribunal on 1st August 2024.A case management discussion was fixed for 20th December 2024 at 2pm.

**Case Management Discussion**

2.The Applicant did not attend the case management discussion but was represented by Mrs Munro of Edinburgh University Students Association Advice Place. The Respondent attended and represented himself.

3. The Tribunal had sight of the application, a tenancy agreement, a bank statement and emails from the three Tenancy Deposit Scheme Providers in Scotland, together with messages between the parties regarding the payment of a deposit. The Respondent had lodged written representations on 20<sup>th</sup> November 2024 acknowledging that the deposit paid in Applicant's tenancy was not paid into an approved deposit scheme.

4. The parties had entered into a tenancy at the property with effect from 14<sup>th</sup> August 2023 with monthly rent payable of £2100, and the tenancy had ended around 31<sup>st</sup> of July 2024. The Applicant was the only tenant named in the tenancy agreement but it was accepted that another person had stayed at the property and had paid part of the deposit, but Mrs Munro indicated that Mr Zhang was making the application. It was agreed that the total deposit paid was £4200 on 10<sup>th</sup> August 2023 and only £3200 was returned to the Applicant with £1000 having been retained. Mrs Munro indicated that Mr Zhang was considering whether to lodge an application with the tribunal to seek payment of the outstanding part of the deposit as he did not accept it should have been retained but was still considering his position. The Respondent Mr Li in his written representations had explained why the sum of £1000 had been retained by him and considered he had been entitled to do so due to outstanding issues during the tenancy which he considered were the responsibility of the Applicant. This was not accepted. Since it was not known if a further application was to be lodged with the tribunal the tribunal Legal Member decided it was appropriate to proceed to deal with this application on its own and noted that parties wished to go ahead.

5. The tribunal legal member asked Mr. Li the Respondent if he was aware of the duties of a landlord in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011. He explained that he had not been aware of the duties, but his most recent tenant had asked him regarding the deposit and the most recent tenant's deposit was now protected within the required timeframe from the start of the tenancy. The tribunal legal member explained to Mr. Li that there was a second separate duty covered by the application, other than the requirement to protect any deposit paid within 30 working days of the start of the tenancy and that this was to give information as set out in Regulation 42 of the Regulations to the tenant within the same 30 working day period from the beginning of the tenancy. The tribunal legal member went through the information that was required to be given and Mr. Li accepted but he had not complied with both of the duties in terms of Regulation 3.

6. Since the breach of the Regulations was accepted the tribunal Legal Member explained that she could move to consider the appropriate sanction against the Respondent. Both parties were invited to make representations as to the level of sanction which the tribunal should impose and the legal member advised Mr. Li that the tribunal had the power in terms of the Regulations to impose a sanction up to three times the amount of the deposit paid which would be a maximum of £12,600.

7. Mrs Munro on behalf of the Applicant noted that the Applicant in his application had asked for a sanction of three times the amount of the deposit, the maximum allowed. She said however that she was content to leave the amount of the sanction up to the tribunal. She indicated that this was a substantial deposit and as a result of the actions of the landlord there was now a level of mistrust by the Applicant. He was an international student and felt let down by the landlord as he had not complied with

the Regulations. She said that students like the Applicant arrived to study in Scotland and did not know of the Regulations and what was required of landlords.

8. Mr. Li indicated that he was not aware of the Tenancy Deposit Schemes regulations or the approved tenancy deposit scheme providers. He said that he had not understood what was required of him. He considered that he was entitled to have deducted part of the deposit when he returned only £3200 of the deposit to the Applicant. The tribunal legal member explained to him that the question of the deposit was not a matter which could be dealt with in the context of this application. He said he had been renting this property since 2018 and had not been aware of the requirements regarding the deposit. The tribunal member noted that the tenancy agreement which had been lodged by the Applicant appeared to be a pro forma short assured tenancy which could not be created after 1st of December 2017. The tribunal legal member asked Mr. Li if he taken any advice when he became a landlord as the agreement used appeared to be incorrect and he said that he had not and that he had simply downloaded a tenancy agreement from the internet. He said that the tenant had not mentioned the requirement to protect the deposit, and he believed that the new tenant had been advised by Mr Zhang regarding the failure to protect his deposit. He said the property had not been continuously rented since 2018 and he now understood what he had to do. The tribunal legal member explained that the Regulations had been in force for over 10 years, but Mr. Li said that he had never heard of them, nor had they been brought to his attention. It was explained to him that he ought to have known, and it was not for anyone else to draw this to his attention.

9. The tribunal legal member considered that the tribunal had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings in Fact**

10. The parties entered into a tenancy at the property with effect from 14th August 2023 with monthly rent payable of £2100.

11. A tenancy deposit of £4200 was paid by the Applicant to the Respondent on 10th of August 2023.

12. The tenancy deposit was not lodged with an approved scheme within the statutory timeframe or at any time during the tenancy and no information regarding the deposit was provided by the Applicant to the Respondent in that time.

13. The Respondent is in breach of Regulations 3 and 42 of the Regulations

14. The tenancy ended around 31st July 2024.

15. The Respondent refunded part of the tenancy deposit to the Applicant in the sum of £3200 but retained the sum of £1000 due to repairs he said he required to carry out and outstanding issues during the tenancy which he considered were the Applicant's responsibility

16. The Applicant disputes that the Respondent was entitled to retain £1000 of the deposit.

17. The Respondent has rented out this property since 2018 although not on a continuous basis.

18. There is a new tenant at the property whose deposit has been protected within the appropriate timeframe in the Regulations by being paid into one of the approved tenancy deposit scheme providers.

19. The Respondent was mistaken in failing to adhere to the Regulations.

### **Reasons For Decision**

20. Having found that the Respondent had not complied with the duties and Regulations 3 and 42 of the Regulations the tribunal had regard to Regulation 10 of the regulations which states that the tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

21. The tribunal had regard to the submissions put forward by the Applicant's representative and the Respondent himself. The tribunal accepted the Respondent's position that he had been genuinely mistaken and had not acted deliberately in failing to comply with the duties.

22. The tribunal had regard to case law in relation to this type of application and considered the Upper Tier Tribunal decision in *Rollet v Mackie* 2019 UT 45, where it was said by Sheriff Ross that "cases at the most serious end of the scale might involve repeated breaches against a number of tenants, fraudulent intention, deliberate or reckless failure to observe responsibilities, denial of fault, very high financial sums involved, actual losses caused to the tenant or other hypotheticals".

23. The Tribunal also considered the case of *Jensen v Fappiano* (Edinburgh Sheriff Court January 2015) noting the tribunal has discretion in determining the sum awarded and must consider the facts and circumstances of each case.

24. In this application it was suggested that the Respondent rented out this property only and had taken no advice before taking on this role. He appeared genuinely ignorant of the Regulations and readily accepted his fault in this matter. The fact that he had taken no advice appeared to be borne out by his use of a tenancy agreement sourced online which was not up to date in terms of the law. The property has been re let and the new tenant's deposit has been protected in an approved scheme. The tribunal took into account that the Respondent had accepted that he had failed to secure the deposit before the case management discussion and confirmed this during the teleconference, accepting also that he failed to comply with the duty set out in Regulations 3 and 42, requiring information to be given. The concern of the tribunal was that this was a case where there was a dispute over the non-return of part of the deposit and the failure to lodge it within an approved scheme had deprived the Applicant of the ability to use the services of the approved tenancy deposit scheme provider mediation service. The dispute over whether the £1000 retained by the Respondent from the deposit was properly retained was not a matter that had been determined and had not yet come to the tribunal and it was not clear if that dispute would be

brought to the tribunal. The tribunal legal member explained to the Respondent that this type of situation was exactly what the scheme protection was designed to avoid. That said the tribunal was satisfied that the Applicant was wholly ignorant of his duties but of course this is no excuse for his failures, but he has taken steps to rectify the position in with the tenancy now ongoing at the property. The aggravating factors set out in Rollet did not appear to feature in this application. In addition, the Respondent admitted his fault in the matter ahead of the case management discussion and was candid regarding his position during the teleconference. This was not an application which appeared to require a sanction at the higher end of the tribunal's discretion although the culpability of the landlord in this matter had to be marked. The Tribunal came to the view that a sanction of a sum just over half of the total deposit was appropriate in this application.

25. The tribunal was satisfied the appropriate sanction in relation to this application it was £2500.00.

### **Decision**

The Tribunal determined that the Respondent has not complied with Regulation 3 of the Regulations and granted an order in favour of the Applicant and against the Respondent in sum of Two Thousand Five Hundred Pounds( £2500.00)

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Valerie Bremner

**20.12.24**

**Legal Member/Chair**

**Date**